Remarks

In the September 12, 2006 Office Action, the Examiner imposed a restriction under 35 U.S.C. § 121 to one of the following Groups:

I. Claims 13-16, drawn to a pharmaceutical composition comprising R(+)-N-propargyl-1-aminoindan or a pharmaceutically acceptable salt thereof, 2-amino-6-trifluoromethoxybenothiazole and a pharmaceutically acceptable carrier, classified in class 514, subclass 647;

II. Claims 1-12, drawn to a method for treating amyotrophic lateral sclerosis (ALS) in a subject in need of such treatment comprising administering to the subject R(+)-N-propargyl-1-aminoindan or a pharmaceutically acceptable salt thereof in an amount effective to treat ALS in the subject, classified in class 514, subclass 647.

For the reasons set forth in the September 12, 2006 Office Action, the Examiner alleged that these inventions are distinct, and have acquired a separate status in the art because of their alleged divergent subject matter, and that restriction for examination purposes as indicated is proper.

In the September 12, 2006 Office Action, the Examiner alleged that the inventions of Groups I & II are distinct from each other, and allegedly represent a separate and distinct product and process of use. The Examiner stated that the product as claimed can be used in a materially different process of using that product because the product as claimed can be used to treat depression. Thus, the Examiner claimed that the inventions of Groups I & II are patentably distinct.

In response, Applicants elect, with traverse, claims 1-12, corresponding to **Group II**, for initial examination. Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement for the reasons that follow.

Under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination would include claims to distinct inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims 13-16, i.e. Group I, would not pose a serious burden once the prior art for claims 1-12, i.e., Group II, has been identified. For example, Applicants maintain that identifying the prior art for the pharmaceutical composition of the invention, i.e. claims 13-16, would necessarily identify the methods of use of the pharmaceutical composition of the prior art, and as such, identify the prior art for claims 1-12, i.e., Group II.

Therefore, there is no burden on the Examiner to examine Groups I & II together in the subject application. Hence, Applicants maintain that the Examiner must examine claims 1-16 on the merits.

In view of the foregoing, Applicants maintain that restriction is not proper under 35 U.S.C. § 121, and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned

attorneys invite the Examiner to telephone at the number provided below.

No fee is deemed necessary in connection with the filing of this communication. However, if any other fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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